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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 WILLIAM JOHN DAUGHTERY,

12 Plaintiff,

13 vs.

14 DENNIS WILSON, et al.,

15 Defendants.

CASE NO. 08cv408-WQH-BLM

ORDER

16 HAYES, Judge:

17 The matter before the Court is the review of the Report and Recommendation (Doc. 61) filed
18 on October 23, 2008 by the United States Magistrate Judge Barbara L. Major.

19 On March 3, 2008, Plaintiff William John Daughtery, a state prisoner proceeding pro se, filed
20 a complaint pursuant to 42 U.S.C. § 1983 against San Diego Police Officer Dennis Wilson, San Diego
21 Police Officer Esmeralda Tagaban, San Diego Police Sergeant Griffin, and San Diego Police Detective
22 Lemus. (Doc. 1). The complaint alleges that the Defendants used excessive force against Plaintiff in
23 violation of his Fourth Amendment right to be free from unreasonable search and seizure. On June
24 19, 2008, Plaintiff filed a first amended complaint adding as defendants the City of San Diego and the
25 San Diego Police Department. (Doc. 25). In Count 5 of the first amended complaint, Plaintiff alleges
26 that the City of San Diego and the San Diego Police Department are “vicariously liable under the
27 doctrine of respondeat superior” for the injuries allegedly caused by the acts of Defendants Wilson,
28 Tagaban, Griffin, and Lemus. (Doc. 25 at 7).

On July 29, 2008, the City of San Diego and the San Diego Police Department filed a Rule


1 12(b)(6) motion to dismiss the first amended complaint against San Diego Police Department and City
2 of San Diego. (Doc. 42). On August 14, 2008, the United States Magistrate issued a Report and
3 Recommendation recommending that this Court grant Defendants' motion and dismiss the claims
4 against the City of San Diego and the San Diego Police Department with prejudice. (Doc. 61). On
5 November 24, 2008, Plaintiff filed objections to the Report and Recommendation. (Doc. 70).

6 **RULING OF THE COURT**

7 The duties of the district court in connection with the Report and Recommendation of a
8 Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. §
9 636(b)(1). The district court "must make a de novo determination of those portions of the report . . .
10 to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or
11 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). The Court has considered all
12 objections filed by the Plaintiff and reviewed de novo all portions of the Report and Recommendation.
13 The Court adopts the Report and Recommendation of the Magistrate Judge in its entirety. The
14 Magistrate Judge correctly concluded that Count 5 of the first amended complaint should be dismissed
15 because Plaintiff failed to comply with the claim presentation requirement of the California Tort
16 Claims Act and that Plaintiff could not possibly cure this deficiency by amending Count 5.

17 IT IS HEREBY ORDERED that (1) the Report and Recommendation (Doc. 61) is adopted in
18 its entirety, (2) the Defendants' Motion to Dismiss the City of San Diego and the San Diego Police
19 Department (Doc. 42) is GRANTED.

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21 DATED: January 16, 2009

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23 **WILLIAM Q. HAYES**
24 United States District Judge
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